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IN THE

Supreme Court of the United States

OCTOBER TERM 1985

The STATE OF IOWA, ex rel.
THOMAS J. MILLER,
Attorney General of Iowa,

and

DANNY GETTLER, et al.,

Petitioners,

vs.

JOHN BLOCK, Secretary of the
United States Department of Agriculture,
in his official capacity, and
THE UNITED STATES DEPARTMENT
OF AGRICULTURE,

Respondents.

BRIEF OF THE STATES OF MINNESOTA, ILLINOIS, KANSAS, NORTH DAKOTA AND WISCONSIN IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF INTEREST

The amici states through their attorneys general respectfully offer this brief in support of the petitioners. This case raises issues of considerable public importance, the resolution of which will directly impact the amici.

Amici are midwestern states whose economies depend largely on agricultural production. Farming and farm-related in-

dustries constitute approximately 25 percent of Minnesota's economic base, and 19 percent of Minnesota's jobs are directly or indirectly related to farming. Interview with Professor Wilbur R. Maki, Agriculture and Applied Economics, University of Minnesota (May 2, 1986). Similarly, in Wisconsin, approximately 26 percent of the value of the State's manufacturing is attributable to agriculture and related business, and 22 percent of the state's jobs are agriculturally related. Wisconsin Department of Agriculture (April 1986) (unpublished).

Because agriculture is vital to the amici, federal agricultural policies and programs have a profound effect on them. This is particularly true now, when the midwestern agricultural economy is in a crisis condition. *See generally* U.S. Department of Agriculture, Financial Conditions of Farmers and Farm Lenders (March 1985); Harl, "The Architecture of Public Policy: The Crisis in Agriculture," presented at the Annual Meeting of the American Agricultural Law Association (October 3, 1985). For example, in 1984, Minnesota's farm equity dropped $8.091 billion, a decline of 22.4 percent. Minnesota Agricultural Statistics Service (November 1985) (unpublished). From June 1, 1984, through June 1, 1985, Minnesota led the nation in the number of farmers lost, as the number of Minnesota farms fell from 101,000 to 96,000. Minnesota Agricultural Statistics Service, AGRI-VIEW, Issue AV-16-85 (Aug. 13, 1985). The 150-page, $16 million farm bill passed by the 1986 Minnesota Legislature is further testimony to the severity of the state's farm crisis.

Under these circumstances, amici have a vital interest in insuring that the Secretary of Agriculture implements farm programs in a manner consistent with Congressional intent. The Eighth Circuit Court of Appeals has interfered with this

interest by holding that states have no standing to sue the federal government as *parens patriae*. Because the decision of the Court of Appeals severely limits the ability of the states to protect the economic well-being of their citizens, amici submit this brief in support of the State of Iowa's petition for a writ of certiorari.

SUMMARY OF THE ARGUMENT

The Court should explicitly recognize that the states have standing as *parens patriae* to sue the federal government to enforce a Congressional mandate. The Eighth Circuit Court of Appeals has misinterpreted this Court's precedent as establishing an absolute bar to a state's *parens patriae* action against the federal government and is in conflict with the decisions of several other circuits. The precedent relied upon by the Eighth Circuit should be narrowly construed to prohibit, at most, state *parens patriae* actions brought under the Court's original jurisdiction challenging federal statutes as unconstitutional.

ARGUMENT

I. A STATE WHICH CAN DEMONSTRATE A QUASI-SOVEREIGN INTEREST HAS STANDING AS *PARENS PATRIAE* TO SUE THE FEDERAL GOVERNMENT TO ENFORCE A CONGRESSIONAL MANDATE.

The Eighth Circuit has misinterpreted this Court's precedent as establishing an absolute bar to a state's *parens patriae* action against a federal agency. In holding that the State of Iowa lacked standing to sue the U.S. Department of Agriculture, the Eighth Circuit relied on this Court's decision in

Snapp v. Puerto Rico, 458 U.S. 592 (1982). In *Snapp*, Puerto Rico brought a *parens patriae* action against private individuals and companies, alleging violations of federal law. This Court held that if a state establishes a quasi-sovereign interest, it can bring such an action. *Id.* at 607. However, in a footnote that is clearly dicta, the Court also stated that: "A state does not have standing as *parens patriae* to bring an action against the federal government." *Id.* at 610 n.16. In support of this position the Court cited *Massachusetts v. Mellon*, 262 U.S. 447 (1923).

It is true that the *Snapp* footnote relied upon by the Eighth Circuit sweeps broadly and might appear to prohibit any *parens patriae* action against the federal government. However, the language quoted above should be narrowly construed when considered in light of the holding in *Massachusetts v. Mellon* and the continuing evolution of federal-state relations.

In *Mellon*, Massachusetts attempted, as *parens patriae*, to have the federal Maternity Act declared unconstitutional as outside the scope of Congressional power. This Court held that a state could not bring a *parens patriae* action within the original jurisdiction of the Supreme Court to strike down a federal statute as unconstitutional. The Court held that a state, as *parens patriae*, could not "institute judicial proceedings to protect citizens of the United States from the operations of the statutes thereof." 262 U.S. at 485. Thus, *Mellon* holds only that a state may not stand between its citizens and the affirmative operation of federal law. It does not hold that a state lacks standing to force a federal agency to comply with its statutory mandate, and it should not be so extended.

Several Circuit Courts of Appeal have refused to extend *Mellon* and have recognized *parens patriae* standing when a state sues on behalf of its citizens to enforce a Congressional

mandate. These decisions are in clear conflict with the Eighth Circuit's holding in the instant matter. In *Washington Utilities & Transp. Comm. v. FCC*, 513 F.2d 1142 (9th Cir.), *cert. denied*, 423 U.S. 836 (1975), the state regulatory agency and association of regulatory utility commissioners sought review of an order of the FCC. The Ninth Circuit found the *Mellon* doctrine inapplicable, noting that "Massachusetts sought to litigate a 'question of distribution of powers between the State and the national government'. . . ." *Id.* at 1153, quoting *Georgia v. Pennsylvania Railroad*, 324 U.S. 439, 445 (1945). In contrast, Washington sought "to vindicate the congressional will by preventing what it [asserted] to be a violation of that statute by the administrative agency charged with its enforcement." *Id.* Because of this distinction, the Ninth Circuit found that the state had standing to sue. *See also Carey v. Klutznick*, 637 F.2d 834, 838 (2d Cir. 1980) (New York had *parens patriae* standing to sue the Census Bureau for undercounting New York residents); *Florida v. Weinberger*, 492 F.2d 488, 493-94 (5th Cir. 1974) (state had standing to challenge the validity of an HEW regulation).

A growing number of district courts have relied on the *Washington Utilities* rationale. These cases correctly adopt a narrow construction of *Mellon* which permits a state to sue as *parens patriae* to enforce the affirmative obligation of a federal agency. *E.g., City of New York v. Heckler*, 578 F. Supp. 1109 (E.D.N.Y.), *aff'd*, 742 F.2d 729 (2d Cir. 1984), *cert. granted*, 106 S. Ct. 57 (1985) (state challenged procedures used in dispensing social security disability and supplemental security income benefits); *Louisiana v. Lee*, 596 F.Supp 645 (E.D.La. 1984), *vacated on other grounds*, 758 F.2d 1081 (5th Cir. 1985), *cert. denied*, 106 S.Ct. 1259 (1986) (state sued the Army Corps of Engineers alleging the Corps

violated the National Environmental Policy Act); *Alabama v. Tennessee Valley Authority*, 467 F.Supp. 791 (N.D. Ala. 1979), *rev'd on other grounds*, 636 F.2d 1061 (5th Cir), *cert. denied*, 454 U.S. 837 (1981) (Alabama had standing as *parens patriae* to seek a declaratory judgment against the TVA).

A second ground for limiting *Mellon* is also articulated in some of these cases. In *Mellon*, Massachusetts had invoked the Supreme Court's original jurisdiction. The Court's concern for its own caseload may therefore have been a determining factor in its holding. As this Court has noted, special considerations may call for limited exercise of the Court's original jurisdiction which do not apply when a state brings a *parens patriae* action in federal district court. *Snapp v. Puerto Rico*, 458 U.S. at 603 n.12. *See also* 458 U.S. at 610 (Brennan, J., concurring).

Finally, a broad reading of *Mellon* ignores the dramatic changes in federal-state relations which have taken place in the 63 years since *Mellon* was decided. The federalism *Mellon* sought to protect, "the administrative dualism . . . in which state and federal governments operate in relative autonomy," is extinct. Comment, "State Standing to Challenge Federal Administrative Action: A Reexamination of the *Parens Patriae* Doctrine", 125 U. Pa. L. Rev. 1069, 1087 (1977). Moreover, a state's suit against a federal agency is no more disruptive to the operations of that agency than a suit by a private party. Comment, "Federal Jurisdiction: State *Parens Patriae* Standing in Suits Against Federal Agencies," 61 Minn. L. Rev. 691, 703 (1977). *Mellon* should be read to accommodate the modern, cooperative nature of state-federal relations, especially when a state is not challenging a Congressional mandate but is attempting to enforce it.

CONCLUSION

The Court should grant certiorari in this case to clarify the exact parameters of *Mellon* and whether the dicta in *Snapp* relied upon by the Eighth Circuit is this Court's definitive holding on *parens patriae* standing. The amici states urge the Court to grant certiorari for the reasons stated above and the reasons contained in the petition for writ of certiorari filed by the State of Iowa.

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